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C O N F I D E N T I A L SECTION 01 OF 02 GUATEMALA 001952

SIPDIS

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TAGS: [PGOV](#) [PINR](#) [PREL](#) [PHUM](#) [KJUS](#) [KDEM](#) [GT](#)

SUBJECT: RIOS MONTT REGISTERED AS PRESIDENTIAL CANDIDATE

REF: GUATEMALA 1944

Classified By: Charge d'Affaires David Lindwall for reason 1.5 (b) and (d).

11. (C) Summary: FRG leader Efraim Rios Montt was registered as a presidential candidate on July 31, following a ruling by the Constitutional Court ordering the electoral institutions to carry out its decision to that effect of July 14 and void all appeals. Opposition and civil society leaders called the decision "illegitimate" and "the beginning of electoral fraud," and presidential candidates called on the people to defeat Rios Montt at the ballot box. OAS Electoral Observation Mission reps expect the decision to put an effective end to legal challenges to Rios Montt's candidacy. While recognizing the lack of transparency of the decision, the OAS reps did not question its constitutionality. With the standoff over Rios Montt's participation in the elections now, apparently, resolved, attention will shift from the courts to the campaign trail. End summary.

12. (U) On July 30, the Constitutional Court ordered the Registry of Persons and the Supreme Electoral Tribunal to enforce its decision of July 14, allowing the registration of former General Efraim Rios Montt as a presidential candidate in the upcoming elections. The decision of the high court further instructed the Supreme Court to dismiss all appeals against this ruling, and to not accept further appeals which would frustrate the ruling of the Constitutional Court. The Constitutional Court ordered the lower courts to comply with this decision within twelve hours. The Supreme Electoral Tribunal and Registry of Persons convened during the night of July 30 to carry out its instruction. Rios Montt was given his credentials as a presidential candidate before the 6 a.m. deadline.

13. (U) Opposition and civil society leaders immediately criticized the court's decision. The decision was described as "partisan" and "illegitimate" by practically all opposition leaders quoted in the press, and some called it "the beginning of electoral fraud." GANA presidential candidate Oscar Berger told reporters that "the resolution may be legal, but it is illegitimate. Our strategy should be to win at the ballot box on November 9." Presidential candidates Bueso and Paiz said that the decision was a bad one, but said it had to be accepted ("acatado"). Others in civil society argued that the ruling was unconstitutional, and that no one was obligated to carry out illegal orders.

14. (C) Members of the Dialogue Group (made up of Ambassadors of donor nations and heads of international organizations and international financial institutions) were meeting at the time the Constitutional Court's decision was announced. The unexpected decision by the court was viewed across the board as a manipulation by the FRG, but there was a consensus that resolving the issue once and for all -- even in Rios Montt's favor -- did less violence to the electoral process than the possibility of endless appeals and potential legal actions against other candidacies.

15. (C) OAS Election Observation Mission member Moises Benamor told us on the evening of July 30 that they believe the Constitutional Court's decision will effectively put an end to legal challenges to Rios Montt's candidacy. While there are other appeals that could be filed and courts that may be prepared to accept them, the Constitutional Court's decision will put Rios Montt on the ballot and will deprive further appeals of their basis in law. Benamor believes the Court's finding will increase the level of political tension and distrust in the electoral process, but stopped short of questioning its constitutionality.

16. (SBU) The Constitutional Court's unexpected July 30 ruling came about when the FRG filed a motion calling on the high court to enforce its ruling of July 14. To hear this request, the Court held a lottery (note: there is some debate about the transparency of this lottery. End note) to select an alternate justice to replace recused judge Saul Dighero. Francisco Palomo (an FRG loyalist) was selected (Note: Anti-FRG justices had been selected in the two previous lotteries. With two out of five alternate magistrates being supporters of the FRG, it was only a matter of time before a lottery selected one of them, giving Rios Montt a 3-to-2 majority. End note). This newly conformed Court voted to have the original members who issued the July 14 decision resolve the FRG's request to have its decision enforced.

Predictably enough, they voted to order the Supreme Electoral Tribunal and Registry of Persons to implement their decision.

17. (U) There has been little popular reaction to this latest development. News reports claim that FRG leaders met at the Presidential Palace on the night of July 30 to celebrate. There were also unconfirmed reports of small numbers of FRG supporters gathered at the Supreme Electoral Tribunal on the morning of July 31 to celebrate. There have been no reports of opposition protests.

18. (C) Comment: As one presidential candidate told reporters, "nothing should surprise us anymore." The legal actions for and against Rios Montt's candidacy have broken new ground and stretched the interpretations of Guatemala's constitution in precedent-setting ways. Those who have used the courts to challenge Rios Montt's candidacy can be expected to continue seeking legal avenues for their appeal. However, the Constitutional Court's decision will effectively move the debate from the legal arena to the campaign trail.  
LINDWALL